

1960

c 1 Absconding Debtors Act

Ontario

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CHAPTER 1

The Absconding Debtors Act

1. In this Act, "property" includes credits and effects. Interpretation
R.S.O. 1950, c. 1, s. 1.

2.—(1) Where a person resident in Ontario departs there- Who to be regarded as absconding debtors
from with intent to defraud his creditors or any of them, or to
avoid being arrested or served with process, being then pos-
sessed of any real or personal property therein not exempt
by law from seizure under execution, he shall be deemed an
absconding debtor, and such property may be seized and
taken by an order of attachment for the satisfying of his
debts.

(2) The order shall be made only in a pending action. When order may be made
R.S.O. 1950, c. 1, s. 2.

3.—(1) Upon affidavit made by a plaintiff or his agent Affidavit and order of attachment
that the defendant is indebted to the plaintiff in a sum exceed-
ing \$100, stating the cause of action, and that the deponent
has good reason to believe and does believe that such defend-
ant has departed from Ontario and has gone to some place,
stating it, to which he is believed to have fled, or that the
deponent is unable to obtain any information as to the place
to which he has gone, with intent to defraud his creditors or
any of them, or to avoid being arrested or served with pro-
cess, and was, at the time of his so departing, possessed to
his own use and benefit of real or personal property in On-
tario not exempt by law from seizure under execution, and
upon the further affidavit of two other persons that they
are well acquainted with the defendant and have good rea-
son to believe and do believe that he has departed from
Ontario with intent to defraud his creditors or any of them,
or to avoid being arrested or served with process, a judge of
the Supreme Court may make an order in the Supreme
Court for the attachment of the property of such defendant.

(2) Where the sum claimed is within the jurisdiction of County court jurisdiction
the county court, a judge thereof may in like manner make
an order of attachment in that court. R.S.O. 1950, c. 1, s. 3.

Service of
order

4. A copy of the order shall be served upon the defendant. R.S.O. 1950, c. 1, s. 4.

Term of
validity

5. The order shall remain in force for six months. R.S.O. 1950, c. 1, s. 5.

Certified
copies of
order

6. The plaintiff may at any time while the order is in force obtain from the proper officer one or more certified copies thereof, which may be delivered to any sheriff other than the sheriff to whom the original order was delivered, and he may thereunder attach the property of the defendant in his bailiwick. R.S.O. 1950, c. 1, s. 6.

Liability of
property to
attachment

7. All the property of an absconding debtor liable to seizure under execution may be attached in the same manner as it might be seized under execution, and the sheriff to whom the order of attachment is directed shall forthwith take into his charge all such property, according to the exigency of the order, and shall be allowed all necessary disbursements for keeping the same, and he shall immediately call to his assistance two substantial freeholders of his county, and with their aid shall make a just and true inventory of all the personal property, evidence of title or debts, books of account, vouchers and papers that he has attached, and shall return such inventory signed by himself and such freeholders, together with the order. R.S.O. 1950, c. 1, s. 7.

Sale of live
stock and
perishable
goods

8.—(1) Where horses, cattle, sheep or pigs, or perishable property, or such as from its nature cannot be safely kept or conveniently taken care of, are taken under an order of attachment, the sheriff who attaches them shall have them appraised, on oath, by two competent persons, and, if the plaintiff desires it and deposits with the sheriff a bond to the defendant executed by two freeholders, approved as sufficient by the sheriff, in double the appraised value of the property, conditioned for the payment of the appraised value to the defendant, his executors or administrators, together with all costs and damages incurred by the seizure and sale thereof, in case judgment is not obtained by the plaintiff against the defendant, then the sheriff shall proceed to sell all or any of such property at public auction to the highest bidder, giving not less than six days notice of the sale, unless any of the property is of such a nature as not to allow of that delay, in which case the sheriff may sell it forthwith, and the sheriff shall hold the proceeds for the same purposes as he would hold property seized under the order of attachment.

Restoration

(2) If the plaintiff, after notice to him or to his solicitor of the seizure of any property mentioned in subsection 1,

does not deposit such bond, then, after four days next after the notice, the sheriff is relieved from all liability to the plaintiff in respect to the property so seized, and the sheriff shall forthwith restore it to the person from whose possession it was taken. R.S.O. 1950, c. 1, s. 8.

9.—(1) Where the sheriff finds any property, or the proceeds of any property that has been sold as perishable, belonging to the defendant in the custody of a constable or of a bailiff or clerk of a division court under a warrant of attachment issued, or finds money paid into court under a garnishment summons under *The Division Courts Act*, the sheriff shall demand and is entitled to receive the same from the constable, bailiff or clerk, who, on demand and notice of the order of attachment, shall forthwith deliver the same to the sheriff, under the penalty of forfeiting double the value thereof, to be recovered by the sheriff, with costs of suit, and to be by him accounted for after deducting his own costs, as part of the property of the defendant, but the creditor who has sued out the warrant of attachment or taken the garnishment proceedings in the division court may proceed to judgment, and on obtaining judgment, and serving a certificate of the amount thereof, and of the costs, under the hand of the clerk and the seal of the division court, is entitled to share in the distribution, if any, by the sheriff under *The Creditors' Relief Act*. Proceedings if sheriff finds property in the hands of a bailiff or clerk of a division court R.S.O. 1960, c. 110

(2) The costs and disbursements of such constable or bailiff are a first charge upon such property and proceeds and shall be paid by the sheriff upon demand after being taxed by the clerk of the division court. R.S.O. 1950, c. 1, s. 9. Costs of bailiff or constable

10. The costs of the sheriff for seizing and taking charge of property under an order of attachment, including the sums paid to persons for assisting in taking an inventory and for appraising, shall be paid in the first instance by the plaintiff, and when paid shall be taxed to him as disbursements in the action. R.S.O. 1950, c. 1, s. 10. Sheriff's costs, how paid

11. Where the sheriff has made an inventory and appraisal on the first order of attachment, he shall not be required to make nor shall he be allowed for a new inventory and appraisal upon a subsequent order coming into his hands. R.S.O. 1950, c. 1, s. 11. Cost of inventory

12.—(1) Where the defendant or any person on his behalf executes and files in the office from which the order of attachment, or the first order if there are more than one, was issued, a bond to the sheriff with at least two sufficient sureties Restoration of goods to debtor on his giving security

approved by the proper officer in such office or by the local judge or master, binding the obligors jointly and severally in double the appraised value of the property attached, conditioned that the defendant (*naming him*) will whenever required by order of a judge of the court pay into court the appraised value of the property or so much thereof as will be sufficient to satisfy the claims of all creditors who may be entitled to share in the proceeds of the property, or will produce and deliver to the sheriff the property attached, a judge of the court may direct that such property be restored to the debtor.

Proceedings
on default

(2) If within one month after the property has been attached such bond is not executed and filed, a judge of the court may direct the sheriff to sell any of the goods and chattels that have been attached, except chattels real, upon such terms as to the judge seem just. R.S.O. 1950, c. 1, s. 12.

Costs of
first
attachment

13. The costs of the first order of attachment and of the execution thereof have priority over all execution debts and other costs. R.S.O. 1950, c. 1, s. 13.

Liability of
persons
paying debts
to abscond-
ing debtor
after notice
of
attachment

14.—(1) Where notice in writing of the order of attachment has been duly served by the sheriff, or by or on behalf of the plaintiff, upon a person owing a debt or demand to, or who has the custody or possession of property of, the defendant, and such person after such notice pays the debt or demand or delivers the property to the defendant or to any one for him, he shall be deemed to have done so fraudulently, and, if the other property seized by the sheriff is insufficient to satisfy the claims of all creditors who are or become entitled to be paid out of the same or the proceeds thereof, such person is liable to the sheriff for the amount of the debt or demand so paid or for the property so delivered or the value thereof.

Duty of
sheriff

(2) The sheriff is not bound to sue until a bond is given by one or more of the plaintiffs or claimants with two sufficient sureties, who may be other of the plaintiffs or claimants, payable to the sheriff by his name of office in double the amount of the debt or of the value of the property sued for, conditioned to indemnify him from all costs, loss and expense that he may incur in the prosecution of the action or to which he may become liable in consequence thereof.

Stay of
proceedings
taken by
absconding
debtor

(3) If, after the notice mentioned in subsection 1, a person indebted to the defendant, or having the custody or possession of any of his property, is sued for the debt, demand or property by the defendant, or by the person to whom he has assigned the debt, demand or property since the date of the

order of attachment, he may, on affidavit, apply to a judge of the court to stay proceedings in the action until it is known whether the other property seized by the sheriff is sufficient to satisfy the claims mentioned in subsection 1, and the judge may direct an issue to try any disputed question of fact or make such other order as seems just. R.S.O. 1950, c. 1, s. 14.

15. If the other property of the defendant proves insufficient to satisfy the executions against him and the claims certified under *The Creditors' Relief Act*, and there remain debts due to the defendant, the attempt to collect which would be less beneficial to his creditors than a sale thereof, the sheriff may, by leave of a judge of the court, sell such debts by public auction after such advertisement as the judge directs and, pending such advertisement, the sheriff shall keep a list of the debts to be sold open for inspection at his office, and shall give free access to all documents and vouchers explanatory of such debts; but every debt amounting to more than \$100 shall be sold separately, unless the judge otherwise directs. R.S.O. 1950, c. 1, s. 15.

Sale of debts by sheriff
R.S.O. 1960, c. 78

16.—(1) The person who purchases a debt from the sheriff may sue for it in his own name, and a bill of sale (Form 1) executed by the sheriff is admissible in evidence as *prima facie* proof of such purchase and of the sheriff's authority to sell, without proof of the handwriting of the sheriff, or of the execution or order, or of the sale.

Right of purchaser to sue

(2) In an action by the purchaser, the defendant may set up any defence that would have availed him against the absconding debtor at the date of the order of attachment. R.S.O. 1950, c. 1, s. 16.

What defence may be set up

17. Where the plaintiff desires to avail himself of *The Creditors' Relief Act*, he may, instead of proceeding with his action, obtain a certificate and, in that case, may add the costs incurred in the action to the amount of his claim, unless a judge of the court otherwise orders. R.S.O. 1950, c. 1, s. 17.

Option

18. Where an order of attachment has been made but no execution at the suit of a creditor against the property of the debtor is placed in the sheriff's hands for execution within three months thereafter or within such further time as a judge of the court directs, all the property of the absconding debtor or unappropriated money, the proceeds of any part of such property remaining in the sheriff's hands, together with all books of account, evidences of title, or of debt, vouchers and papers whatsoever belonging thereto, shall be delivered

Sheriff's duty and end of his responsibility

to the absconding debtor or to his authorized agent, or to the person in whose custody the same were found, or, if taken or received under section 9, to the constable, bailiff or clerk from whom the same were taken or received, upon being repaid the amount, if any, that the sheriff may have paid under subsection 2 of section 9, and thereupon the responsibility of the sheriff in respect thereto determines, or, if a bond has been given under section 12, the bond shall be delivered up to be cancelled. R.S.O. 1950, c. 1, s. 18.

FORM 1

BILL OF SALE OF A DEBT

(Section 16)

In consideration of \$., the receipt whereof I hereby acknowledge:

I, A. B., Sheriff of the County of, under and by virtue of an order of attachment dated, issued under *The Absconding Debtors Act* against the real and personal property of C. D., an absconding debtor, and under and by virtue of an order in that behalf, hereby sell and assign to E. F. all claim by the said C. D. against G. H., of (*describing the debtor*), with the evidences of debt and the securities there-to appertaining.

Witness my hand and seal of office, this day of, 19 . . .

A. B.,
Sheriff of the County of

R.S.O. 1950, c. 1, Form 1.
